

NIK-0001

**REMARKS**

Claims 1-28 remain pending in the present application. It should be noted that Claim 14 has been amended to correct a typographical error noted by the Applicant and is not intended to limit the scope of the claims.

The Requirement for Restriction contends that the application is drawn to the following distinct inventions:

- Group I: Claims 1-19, drawn to an apparatus
- Group II: Claims 20-26, drawn to a process; and
- Group III: Claims 27-28, drawn to a kit.

Applicants elect, with traverse, Group (I), drawn to an apparatus, Claims 1-19. The Examiner requires restriction on the ground that the inventions are patentably distinct from each other since the process as claimed allegedly can be practiced by another materially different apparatus or that the apparatus as claimed can be used in a materially different process of using that product. In addition, the Examiner alleges that the apparatus and kit relate as combination and sub combination. The Applicant believes this restriction to be improper and respectfully traverses this requirement.

The rules require the Examiner to show that there would be some undue burden on the PTO to examine separate inventions in a single application. M.P.E.P. '803 sets forth the manner in which the Examiner must proceed as follows:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine all claims on the merits, even though it includes claims to distinct or independent inventions. [emphasis added].

The Examiner has given no indication that there would be a serious burden of the type required and defined in the M.P.E.P. The Examiner has duly noted that the field of search would include the same class (29) for each alleged invention. The search would differ only in the subclasses. Applicant does not believe the scope of the search proposed is unduly burdensome. The undersigned has frequently noted in his practice before the PTO that issued patents consistently indicate multiple subclasses searched. Since only

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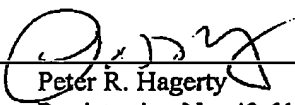
three subclasses are to be searched in this case, it is not believed that the amount of searching would pose the magnitude of burden contemplated by the rules. Moreover, it is believed that at least with respect to Groups I and III that a significant overlap in search queries would result.

Accordingly, it is believed that there is no undue or serious burden and on this basis, the Applicant respectfully requests the Examiner to withdraw the restriction requirement. At a minimum, it is respectfully requested that Groups I and II be examined in a single application in view of the search overlap.

The Commissioner is hereby authorized to charge any required fee or fee deficiency under 37 C.F.R. § 1.17 in connection with this communication to our Deposit Account No. 06-1130.

Respectfully submitted,

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